

# **BOND** SCHOENECK & KING

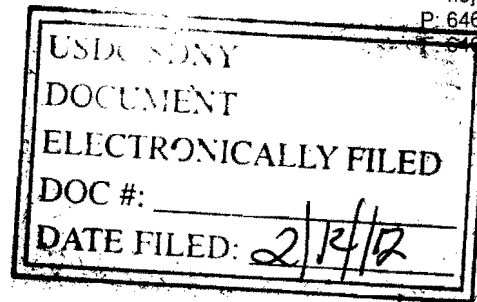
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February 8, 2012

**VIA UPS OVERNIGHT**

The Honorable Cathy Seibel  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601



Re: Francis v. A&E Stores, Inc. (06-cv-1638)(CS)(GAY)

Dear Your Honor:

My firm represents the Defendants in the above-referenced matter. We write in response to the letter dated February 2, 2012 submitted by co-counsel for the plaintiffs. For the reasons set forth in their February 2, 2012 letter and prior submissions to the Court, the Defendants also believe the proposed settlement to be fair and reasonable.

However, the Defendants would like to address two points and would be happy to explore them in greater detail at the conference scheduled for February 14, 2012.

The Defendants would object to any additional notices being sent to potential opt-in plaintiffs informing them they can re-file (or file) FLSA claims. First, the notice of lawsuit that originally was sent in this matter was approved by this Court and we respectfully submit fully explains their rights. Moreover, although the Defendants continue to deny that the relevant similarly situated class ("assistant managers") were misclassified, the Company began transitioning this position to non-exempt in 2005 and the transition was fully complete in approximately October 2008. Accordingly, no one in this potential collective class has any viable claims within the applicable three year statute of limitations under the Act even assuming violations were willful. Finally, the Affidavit of Leah Dweck dated February 2, 2012 shows that the additional four opt-in's who are not receiving any monies under the settlement agreement did not work more than 40 hours during the relevant time period, thus have no damages under the Fair Labor Standards Act. It was, in part, on this basis that Defendants agreed to resolve this case.

With respect to the request to seal the settlement agreement, the Defendants respectfully submit that because, as described above, no one in the similarly situated class has any viable claims within the applicable statute of limitations, there is little, if any, public policy reasons that support public access to the settlement agreement.

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Thank you for your attention in this matter.

Very truly yours,

BOND, SCHOENECK & KING, PLLC

A handwritten signature in black ink, appearing to read "John S. Ho".

John S. Ho  
Member

cc: Leah Dweck  
Brian L. Bromberg, Esq. (Via E-Mail)